

REMARKS

Claims 1-50 were pending in this application. No claims have been added or cancelled. Hence, claims 1-50 remain pending in this application.

Claims 1-31 and 50 have been amended to clarify that the multimedia user interface is stored as computer-readable instructions on a computer-readable medium. Support for the amendment may be found throughout the application in general and at least on page 9, lines 17-18 of the specification.

Claim 32 has been amended to clarify that the patient testing component presents audio and visual instructions for causing the patient to interact with the automated hearing test during the hearing related test. Support for the amendment may be found throughout the application in general and at least on page 7, lines 5-14 of the specification.

Claims 14-15, 28-29, 34-35, 40, and 42 have been amended to replace “can be” with --is adapted to be-- in accordance with the Examiner’s request. Claim 15 has also been amended to change its dependency from claim 13 to claim 14.

No new matter was added at a result of the above amendments.

Allowable Subject Matter

Applicant gratefully acknowledges the indication of allowable subject matter in claims 7-11, 29-30, 35, 38-40, and 50. These claims were either rejected under 35 U.S.C. § 101 or objected to, but would be allowable if rewritten in the manner indicated by the Examiner.

Claim Rejections and Objections

Claims 14-15, 28-29, 34-35, 40, and 42 were objected to because the Examiner feels the phrase “can be” should more appropriately be “is adapted to be.” Claim 15 was also objected to because it lacks antecedent basis for the term “web page.”

Claims 1-31 and 50 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claims 1-6, 12-17, 21-25, 27-28, 31-34, 36-37, 41-43, and 46-48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent 6,428,485 (Rho) in view of US Patent 6,168,563 (Brown).

Claims 18-20 and 44-45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rho in view of Brown and further in view of US Published Patent Application 2002/0076056 (Pavlakos).

Claims 26 and 49 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rho in view of Brown and further in view of US Published Patent Application 2003/0083591 (Edwards).

To the extent the rejections may be considered to apply to the claims as amended, these rejections and all grounds on which they are based are respectfully traversed.

Arguments in Support of the Claims

As an initial matter, Applicant wishes to thank the Examiner for the thorough evaluation of the application and the rather large number of claims. With respect to the objection and rejection of the claims under 35 U.S.C. § 101, such objection and rejection have been addressed by the amendments made herein and, therefore, withdrawal of the objection and rejection is respectfully requested. With respect to the rejection of the claims 35 U.S.C. § 103(a), Applicant respectfully disagrees with the Examiner that the combination of Rho, Brown, Pavlakos, and/or Edwards renders obvious the claimed invention.

According to MPEP 2142, a prima facie case of obviousness requires three basic criteria:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. **The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.** *In re Vacck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

MPEP 2142, emphasis added.

Applicant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness under MPEP 2142 because no specific teaching or suggestion to make the claimed combination nor any reasonable expectation of success have been identified in the prior art.

On the contrary, Rho teaches a completely opposite approach from Brown, Pavlakos, and Edwards. Rho is clearly directed to a self-administered hearing test (i.e., a test administered by the patient to himself). *See, e.g., Abstract*. Brown, Pavlakos, and Edwards, on the other hand, are all directed to tests that are administered to the patient by healthcare providers. Brown, for example, teaches a remote health monitoring and maintenance system for remotely managing a patient's health. *See, e.g., Abstract*. Pavlakos teaches a system for employers to more accurately track transient employees and their hearing history. *See, e.g., paragraph [0007]*. Edwards teaches a remotely administered hearing test that may be conducted over the Internet. *See, e.g., Abstract*. Therefore, not only is there a lack of motivation to combine Rho with the other cited references, a person of ordinary skill in art would be led down a completely opposite path.

In any event, providing Rho with a reporting component as recited in independent claims 1 and 32 (i.e., one that is configured to present the result of the patient's hearing related test in a graphical format, including any data relevant to a hearing health professional) would defeat the main purpose of Rho. Rho, being a self-administered test, aims to provide the results in a textual manner that would be clear and easy to understand to an untrained patient. The way Rho achieves this aim is by reducing the data down to five grades of hearing hardness, each

grade accompanied by the causes and symptoms of the associated hearing loss. *See, e.g., Table 1.* To replace the textual format of Rho with a graphical format that includes data a highly-trained hearing health professional would like to see, as recited in independent claims 1 and 32, would utterly confuse the patient.

Nevertheless, in order to expedite prosecution of this application Applicant has amended independent claim 32 to recite, among other things, that the patient testing component presents **audio and visual** instructions for causing the patient to interact with the automated hearing test during the hearing related test. Nowhere does Rho, Brown, Pavlakos, or Edwards disclose or suggest such a **multimedia** approach to non-test interaction with an automated hearing test. Therefore, because neither Rho, Brown, Pavlakos, nor Edwards, taken alone or in combination, discloses or suggests a patient testing component that presents both audio and visual instructions for causing the patient to interact with an automated hearing test, withdrawal of the rejection against independent claims 1 and 32 under 35 U.S.C. § 103(a) is respectfully requested.

As for dependent claims 2-31 and 33-49, although they may recite independently allowable subject matter, these claims depend from independent claims 1 and 32, respectively, and are therefore allowable for at least the same reasons.

CONCLUSION

In view of the above amendment, Applicant believes the pending claims 1-50 are in condition for allowance and the Examiner is respectfully requested to pass this application to issuance.

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Respectfully submitted,

By: /Daniel G. Nguyen/

Daniel G. Nguyen

Registration No.: 42,933

JENKENS & GILCHRIST, A PROFESSIONAL
CORPORATION

5 Houston Center

1401 McKinney, Suite 2600

Houston, Texas 77010

(713) 951-3354

(713) 951-3314 Facsimile

Attorneys For Applicant